WISCONSIN SUPREME COURT CALENDAR AND CASE SYNOPSES JANUARY, 2010

Please note, cases listed below will be heard in the Wisconsin Supreme Court Hearing Room, 231 East, State Capitol.

This calendar includes cases that originated in the following counties:

Eau Claire
Fond du Lac
Marathon
Milwaukee
Racine
Walworth

TUESDAY, JANUARY 5, 2010

9:45 a.m.	07AP2711-CR	State v. Donald J. McGuire
10:45 a.m.	08AP1703	Dawn M. Sands v. Menard, Inc.
1:30 p.m.	07AP2791	Admanco, Inc. v. 700 Stanton Drive, LLC

WEDNESDAY, JANUARY 6, 2010

9:45 a.m.	07AP2861	Racine County v. Oracular Milwaukee, Inc., et al.
10:45 a.m.	08AP1700	Maryland Arms Limited Partnership v. Cari M. Connell
1:30 p.m.	07AP1281-D	Office of Lawyer Regulation v. Michael F. Hupy

THURSDAY, JANUARY 7, 2010

9:45 a.m.	08AP1204-CR	State v. Juiquin A. Pinkard
10:45 a.m.	08AP1385	Volvo Trucks North America v. Wausau Truck Center, Inc., et al.

The Supreme Court calendar may change between the time you receive this synopsis and when the cases are heard. It is suggested that you confirm the time and date of any case you are interested in by calling the Clerk of the Supreme Court at 608-266-1880. That office will also have the names of the attorneys who will be arguing the cases.

Radio and TV, and print media wanting to take photographs, must make media requests 72 hours in advance by calling Supreme Court Media Coordinator Rick Blum at 608-271-4321. Summaries provided are not complete analyses of the issues presented.

WISCONSIN SUPREME COURT
TUESDAY, JANUARY 5, 2010
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a Walworth County Circuit Court decision, Judge James L. Carlson, presiding.

2007AP2711-CR State v. McGuire

This case examines the statute of limitations' tolling provision and whether a 36-year delay in prosecuting sex assault charges against a priest violated his rights to equal protection and due process or the privileges and immunity clauses of the U.S. Constitution.

Some background: Donald McGuire was a Jesuit priest, who at the time of the alleged assaults in 1967 or 1968 taught at an academy in Illinois.

In 2003, Victor B. and Sean C. told police they were students at the academy when McGuire allegedly had sexual contact with them individually and on separate occasions after traveling to a cottage in Fontana, Wis.

A criminal complaint was filed against McGuire in 2005, and a trial held during 2006. The jury convicted McGuire on five counts, and he was sentenced to seven years initial confinement and 20 years probation. The prison term was stayed while McGuire challenged the conviction.

McGuire claims the tolling provision of Wis. Stat. § 939.74 (1) (1966-69) is unconstitutional as applied to him, and that the delay resulted in prejudice. He also contends that new evidence was discovered and that many witnesses who would have aided in his defense are dead, and the memories of those who did testify at trial had faded.

The trial court rejected McGuire's motion for post-conviction relief. The Court of Appeals affirmed, noting that the applicable statute of limitations contained a provision tolling "the time during which the actor was not publicly a resident within the state," and concluded McGuire's rights weren't violated.

The Court of Appeals concluded that McGuire could not establish that the delay in charging was to gain a tactical advantage because there was no dispute that the state did not learn about the crimes until 2003. The passage of time also affected the state's ability to present its case, the Court of Appeals reasoned.

McGuire acknowledges that Wisconsin's usual six-year statute of limitations is tolled while a defendant is out of state, but he questions whether the unlimited tolling provision is constitutional where it undermines the accused person's ability to present a defense. McGuire also contends he was denied the effective assistance of counsel.
The state contends the Court of Appeals correctly concluded that there was a rational basis for the tolling provision, and that the defendant did not suffer actual prejudice because he was still able to confront his accusers and present a defense.

WISCONSIN SUPREME COURT
TUESDAY, JANUARY 5, 2010
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a Eau Claire County Circuit Court decision, Judge Paul J. Lenz, presiding.

2008AP1703 Dawn M. Sands v. Menard Inc.

This case examines whether reinstatement of an employee as provided in an arbitration award is required when neither the employer nor former employee requested it as a remedy.

Some background: Dawn M. Sands was terminated from her employment as a vice president and executive general counsel with Menard after a dispute over compensation. Sands believed Menard was engaged in gender-based pay discrimination, and the employment contract required arbitration of all employment claims.

An arbitration panel found that Menard violated the Equal Pay Act by paying the plaintiff less than a similarly situated male employee. It also found that Menard retaliated against the plaintiff for asserting her rights in violation of the Equal Pay Act, Title VII of the Civil Rights Act of 1964, and the Wisconsin Fair Employment Act.

The arbitration panel awarded Sands approximately $1.4 million in compensatory and punitive damages. It also ordered Menard to reinstate the plaintiff to a position with a specified salary and bonus, although neither party had sought reinstatement.

Menard refused to reinstate the plaintiff and moved to vacate the reinstatement order. Menard asserted that the arbitrators manifestly disregarded the law permitting front pay to be awarded in lieu of reinstatement where the relationship between the parties is hostile. The circuit court denied the motion to vacate the reinstatement order. Pointing to the deferential standard for reviewing arbitration awards, the circuit court concluded that any error was insufficient to vacate the award. Menard appealed, and the Court of Appeals affirmed.

The Court of Appeals said Menard was essentially arguing that the arbitrators erroneously exercised their discretion in failing to explicitly consider that Menard did not want to reinstate the plaintiff. The court said it does not review arbitration awards for an erroneous exercise of discretion.

The Court of Appeals concluded Menard failed to demonstrate that the arbitrators here manifestly disregarded the law. It noted Menard did not dispute that reinstatement is a remedy under the Equal Pay Act and Title VII and that neither of those acts provide an exception for in-house counsel.

Menard Inc. has asked the Supreme Court if its right to choose its general counsel must yield to the arbitration award when relations between it and the employee are irretrievably broken.

A decision by the Supreme Court is expected to clarify the competing public policy concerns of prohibiting employment discrimination and requiring a relationship of trust and confidence between a client and its attorney.

WISCONSIN SUPREME COURT
TUESDAY, JANUARY 5, 2010
1:30 p.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a Fond du Lac County Circuit Court decision, Judge Peter L. Grimm, presiding.

2007AP2791 Admanco Inc. (Micael Polsky, receiver) v. 700 Stanton Drive, LLC

This case examines letters of credit under Wis. Stat. ch. 128, (2007-08) and the interaction of laws, and the legal relationships among parties, involved in real estate agreement and bankruptcy proceeding.

Some background: In 2004, 700 Stanton Drive, LLC (Stanton) purchased an industrial building from Admanco for $2.5 million. Stanton leased the building back to Admanco, which paid Stanton a security deposit of $61,313.66 and provided an irrevocable standby letter of credit for $375,000 as part of the 15-year lease agreement.

On Dec. 30, 2004, Admanco filed an assignment for the benefit of creditors pursuant to ch. 128, and Michael Polsky was assigned as Admanco's receiver.

Polsky, as the receiver, remained in possession of the leased premises until Admanco's assets were sold to EBSCO Industries in January of 2005. EBSCO occupied the property and entered into a written lease with Stanton beginning April 1, 2005.

During the early stages of the receivership proceeding, Admanco failed to make its Jan. 1, 2005 rent payment as required by the lease. Stanton gave Admanco the required notice and opportunity to cure. Admanco failed to cure.

On Jan. 10, 2005, shortly after Admanco filed for an assignment, Stanton drew down both letters of credit, in the total amount of $750,000, and also retained Admanco's entire security deposit. The issuer of the letters of credit, M&I Bank, was reimbursed the $750,000 for the letters of credit from the sale of Admanco's assets to EBSCO.

Polsky sued in an effort to recover excess lease payments from Stanton. Both parties moved for summary judgment. After a hearing on Oct. 29, 2007, the circuit court entered judgment in favor of Polsky in the amount of $513,292.66, plus statutory costs and fees. In making its decision, the circuit court focused on the application of the receivership statutes, specifically § 128.17(2), and determined that the landlord's claim was limited to past due rent and payment of the rate specified in the lease for the one-month period of occupancy by the receiver in January of 2005. Stanton appealed, and the Court of Appeals affirmed.

The Court of Appeals concluded that a limit in § 128.17(2) applies to this landlord, whose tenant entered into a ch. 128 proceeding. Stanton contends that ch. 128 does not limit its claim because (1) Admanco rejected the lease by filing for receivership, and in any event, it is entitled to lease damages outside the receivership proceeding because (2) Stanton is a secured creditor; and (3) the proceeds from the letters of credit are not property of the estate.

Stanton argued that under the 1898 Bankruptcy Act, a landlord's claims were not discharged in the bankruptcy proceeding and remained valid as they became due and owing. Polsky contends all the assets with which Admanco may have been able to pay were secured under the line of credit.

Admanco says Stanton has no claim in the receivership proceeding for past due rent because Admanco was current on its rent payments at the time the receivership petition was filed.

Stanton asked the Supreme Court to review two issues:

1) if the beneficiary of a letter of credit from a bank which holds a general business security agreement on all of the debtor's property, is a “secured creditor” as that term is defined under § 128.25(1) and therefore outside the purview of ch. 128?; and
2) whether it violates the “independence principle” in Wis. Stat. § 405.103 and common law governing letters of credit to allow an action against the beneficiary of a letter of credit arising out of the issuer's enforcement of its security interest against the debtor's estate?

Under the “independence principle,” Stanton argued that the proceeds from the letters of credit were excluded from the receivership because they were not property of the debtor’s estate and instead stemmed from a separate agreement with M&I.
A decision by the Supreme Court could clarify the legal relationships among parties, and interaction of law, involved in this type of real estate transaction and bankruptcy proceeding.

WISCONSIN SUPREME COURT
WEDNESDAY, JANUARY 6, 2010
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which reversed a Racine County Circuit Court decision, Judge Stephen A. Simanek, presiding.

2007AP2861 Racine Co. v. Oracular Milwaukee

This breach-of-contract case involving a software purchase examines the definition of "professional services" and whether expert testimony is required under certain circumstances.

Some background: In late 2003, Racine County sought bids to upgrade its Peoplesoft World system to Peoplesoft One 8.0 and install the same release of Peoplesoft One Human Resources and Payroll modules.

In February 2004, Racine County executed a consulting service agreement with Oracular Milwaukee. The agreement incorporated, by reference, the county's request for proposal and Oracular's proposal.

The county terminated the contract with Oracular on Feb. 16, 2006, and filed a lawsuit alleging that Oracular breached the consulting service agreement.

Oracular filed a counterclaim for breach of contract and subsequently brought a motion for summary judgment, seeking dismissal of the claim. Oracular argued that the agreement was a professional services contract and the county could not prevail because it had not disclosed any expert witnesses on the standard of care owed by computer consultants. See Hoven v. Kelble, 79 Wis. 2d 444, 463, 256 N.W.2d 379 (1977), and Micro-Managers, Inc. v. Gregory, 147 Wis. 2d at 513.

The county responded that Hoven was factually distinguishable and that requiring expert testimony is required only when the jury is facing unusually complex or esoteric issues. The county pointed out that the agreement required the software to convert data and asserted that it would present fact witnesses who would testify that, when Oracular abandoned the project, the software did not convert data.

It notes that Oracular does not deny that the system was only 53 percent functioning when the contract was terminated – more than a year after the scheduled completion date. It asserts that evaluating whether there was a breach in this case was not beyond the realm of experience of the ordinary juror.

The trial court agreed with Oracular and granted the motion for summary judgment, dismissing the action. The circuit court held that this was a contract for services to install computer software and that expert testimony was required as a matter of law. The circuit court then denied the county's motion for reconsideration, holding that the county's failure to retain expert witnesses was the equivalent of a failure of proof and warranted a grant of summary judgment to Oracular.

The county appealed and the Court of Appeals reversed. The Court of Appeals ruled that Oracular "does not have the characteristics shared by the learned professions considered as professionals." As such, its contract with the county was "a simple contract for services and not a professional services contract." The Court of Appeals ruled further that expert testimony was not required.

Oracular asks the Supreme Court to review:

-- Is expert testimony required to prove a branch of contract claim based on timely completion/delay when a contract involves complex interdependent bilateral performance?

-- What is the proper analysis/criteria for determining whether something is considered a “profession” under Wisconsin law?

-- Are persons providing computer software programming services relating to customized software considered “professionals” under Wisconsin law?

WISCONSIN SUPREME COURT
WEDNESDAY, JANUARY 6, 2010
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a Milwaukee County Circuit Court decision, Judge Michael B. Brennan, presiding.

2008AP1700 Maryland Arms Ltd. Partnership v. Connell

In this landlord-tenant dispute, the Supreme Court is asked to examine whether a landlord and tenant may contractually agree to affix liability on a tenant for any property damage that, while caused by an act of the tenant, was not caused by the tenant's negligence or improper use of the leased premises.

Some background: The facts are undisputed. On Nov. 16, 2004, Cari Connell, a college student, entered into a rental agreement with Maryland Arms Limited Partnership to rent her first apartment. The lease was guaranteed by Cari's mother.

On July 7, 2006, a fire caused by Cari's hair dryer damaged the apartment. Cari was alone in her apartment, asleep, when the fire started. Her hair dryer, which was plugged in, caused the fire but the parties agree that Cari did not previously know of any defect in the hair dryer and did nothing more than plug it in. The fire caused more than $8,000 in damages; a judgment was later entered in the amount of $9,342.31. Maryland Arms filed suit to recoup the damages based on the terms of the rental agreement between the parties.

The parties, the trial court, and the Court of Appeals all agree that resolution of this dispute requires application of the stipulated facts to Wis. Stat. § 704.07, which regulates the duties of a landlord and tenant with respect to damages. However, the statute does not explicitly allocate liability in the situation where a tenant causes damage to an apartment but without negligence.

The Connells argue that Wis. Stat. § 704.07, which regulates the duties of landlords and tenants with regard to damages, requires that Cari must be negligent in connection with the fire as a precondition to the imposition of liability.

The circuit court disagreed, concluding that the lease provision made Cari liable to Maryland Arms "for all damage" to the apartment "in any way caused by the acts of" Cari Connell.

A divided Court of Appeals reversed, concluding that Maryland Arms should be financially responsible for the fire damage. The court ruled that "[b]y signing the lease, the parties were attempting to waive the requirements of the statute. The statute prohibits all such attempts, and renders such clauses void."

In a dissent, Judge Ralph Adam Fine explains that he agrees "with the circuit court that 'any act' means 'any act' and that, accordingly, the lease makes the Connells liable for the damages resulting from the fire that would not have started unless Cari M. Connell plugged in her hair dryer and left it plugged in, irrespective of whether this was 'negligence.'"

Maryland Arms specifically asks the Court to review:

> Can a landlord and tenant contractually agree to affix liability on a tenant for any property damage that, while

caused by an act of the tenant, was not caused by the tenant's negligence or improper use of the leased premises?

A decision by the Supreme Court would develop and clarify the law relating to allocation of liability for damages in landlord-tenant contracts.

WISCONSIN SUPREME COURT
WEDNESDAY, JANUARY 6, 2010
1:30 p.m.

The Wisconsin Supreme Court is responsible for supervising the practice of law in the state and protecting the public from misconduct by lawyers. Lawyers must follow Rules of Professional Conduct developed by the Court. When there is an allegation that a lawyer has acted unethically, the Supreme Court's Office of Lawyer Regulation (OLR) investigates and, if warranted, prosecutes the attorney. A referee – a court-appointed attorney or reserve judge – hears the discipline cases and makes recommendations to the Supreme Court.

2007AP1281-D OLR v. Michael F. Hupy

In this lawyer discipline proceeding, Atty. Michael F. Hupy appeals a referee's report and recommendation in which the referee concluded that Hupy had committed three violations of the Rules of Professional Conduct for Attorneys.

Some background: Hupy's practice includes representing plaintiffs who have been injured in motor vehicle accidents. He and his law firm have historically sent out thousands of direct mail advertising packets to individuals involved in motor vehicle accidents each month.

Beginning in December 2003, Hupy included a postcard in the advertising materials that he mailed out that commented on a criminal conviction against Atty. Charles J. Hausmann, who also represents plaintiffs injured in motor vehicle accidents and also advertises via direct mail. Hupy's postcard stated that despite Hausmann's criminal conviction for defrauding some of his personal injury clients, Hausmann and his law firm were still sending out direct mail advertisements telling individuals involved in motor vehicle collisions to hire a lawyer they can really trust. The next sentence of Hupy's postcard stated: "Lawyers can mail letters and advertise on television without ever having tried a personal injury case." The referee found that this sentence by Hupy referred to Hausmann and the other lawyers at his law firm and was untrue because Hausmann and the other lawyers in his law firm had tried personal injury cases. The referee therefore concluded that Hupy had violated Supreme Court Rule (SCR) 20:8.4(c), which states that it is professional misconduct to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Beginning in November 2003, Hupy also sent out a brochure article in which he stated, among other things, that a lawyer with an office at a specified address had pled guilty to defrauding his personal injury clients and had been sentenced, but was still practicing law pending his appeal. The referee found that this statement, which referred to Hausmann, was accurate at the time the brochure article was first distributed. Hupy, however, sent out the same article again in 2006, by which time Hausmann's criminal appeal had ended, and his license to practice law in Wisconsin had been suspended. The referee therefore found that the article circulated in 2006 contained a misrepresentation in violation of SCR 20:8.4(c).

The final count against Hupy involves whether he made a false or misleading communication about himself or his services when he authorized his law firm to include a 35th Anniversary sticker on his firm's letterhead in 2004. This count involves whether Hupy was entitled to assert that the law firm in which he was a shareholder in 2004 had a

founding date in 1969. Hupy joined the law firm in 1989. The referee concluded that at the earliest the founding date of the law firm could be the date when it was incorporated in 1974. Thus, the referee concluded that Hupy's 35th Anniversary sticker in 2004 was a violation of the applicable ethical rule prohibiting false or misleading communications.

The referee recommended that the court publicly reprimand Hupy and require him to pay the costs of the disciplinary proceeding.

Hupy argues, among other things, that the postcard, brochure article and anniversary sticker were not false or misleading, and that he had a First Amendment right to engage in speech commenting on Hausmann's criminal conviction, and the fact Hausmann's license to practice law was not suspended until his full disciplinary process was completed. For instance, Hupy contends that the statement at issue in the postcard referred to lawyers generally as a profession, not to Hausmann and the other lawyers at his firm, and when so understood, is a true statement. With respect to the brochure article, Hupy argues that the verbatim reuse of an article that was accurate when written did not become meaningfully inaccurate due to the failure to change the tense of a verb. Moreover, he urges that it was at least debatable whether Hausmann was still practicing law in 2006 due to a firm website containing Hausmann's name, a corporate report listing Hausmann as the president of the law firm, and Hausmann's continued ownership of shares in the law firm corporation during his suspension. Finally, Hupy argues that the law firm in which he was a shareholder in 2004 was the same firm that existed as a partnership and then a service corporation since 1969 or 1970.

The Supreme Court will determine whether Hupy committed the three professional conduct violations found by the referee and, if so, what the appropriate level of discipline should be.

WISCONSIN SUPREME COURT
THURSDAY, JANUARY 7, 2010
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which reversed a Milwaukee County Circuit Court decision, Judge Martin J. Donald, presiding.

2008AP1204 State v. Pinkard

This criminal case examines the law as it relates to the "community caretaker" function of police and constitutional protections against unreasonable search and seizure.

Some background: Juiquin Anthony Pickard was convicted of possession of cocaine with intent to deliver and felony bail jumping. The circuit court denied Pinkard's motion to suppress evidence obtained during a warrantless entry. Pinkard appealed, and the Court of Appeals affirmed.

During a hearing on the suppression motion, an officer of the Criminal Intelligence Gang Squad testified that another police officer had received an anonymous call, indicating that two individuals were sleeping in a house where the door was open and cocaine, money and scales were present.

The officer testified that police knocked on the door, which was three-quarters open, and announced themselves as police. After 30 seconds to 45 seconds, police "made the determination to enter and check the welfare of the occupants," and to determine if the occupants were victims of any type of crime. Police woke Pinkard in a bedroom, where cocaine, marijuana and scales were in plain view and a pistol was found under a mattress.

The circuit court concluded that police were acting in their community caretaker function when they entered the residence and Pinkard's bedroom. Pinkard was sentenced to three years initial confinement and five years of extended supervision. Charges of being a felon-in-possession of a firearm were dismissed after the circuit court granted that portion of the suppression motion.

Pinkard contends police used their community caretaker function as a pretext to provide cover for a warrantless entry to investigate the presence of drugs and drug paraphernalia.

Pinkard argues that the officers did not articulate an objectively reasonable basis for performing a caretaker function under the facts of his case. The anonymous caller did not indicate concern for the occupants of the residence, and no paramedic was called, Pinkard contends. Police could easily have called the house or checked with neighbors to determine if there was any reason to expect an emergency situation, Pinkard contends.

Pinkard asserts that the Court of Appeals indicated an officer's subjective intent is not relevant to the objective analysis of whether the officer was engaged in a bona fide community caretaker function.

Pinkard claims that State v. Kramer, 2009 WI 14, 315 Wis. 2d 414, 759 N.W.2d 598. did not make such subjective intent irrelevant, rendering the Court of Appeals' decision in conflict with Kramer and other prior decisions.

A decision by the Supreme Court could clarify the law as it relates to warrantless searches and the community caretaker function of police.

WISCONSIN SUPREME COURT
THURSDAY, JANUARY 7, 2010
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a Marathon County Circuit Court decision, Judge Gregory E. Grau, presiding.

2008AP1385 Volvo Trucks v. Wausau Truck Center

In this review of an administrative law judge's decision, the Supreme Court has been asked to clarify the definition of the statutory term "cure," and to determine whether a truck manufacturer unfairly canceled a dealer's franchise agreement.

Some background: Wausau Truck Center (WTC), which has been a Volvo Truck dealer since 1988, was the only one of eight truck dealerships owned by JX Enterprises (JXE) to sell Volvo Trucks. JXE's other dealers sold Peterbuilt and Ottawa Trucks. JXE has owned WTC since 1996.

In 2000 and 2001 some changes at Volvo led WTC to re-assess the value of its Volvo franchise and to develop a plan to sell or eliminate the franchise. As part of that plan, WTC formally changed its name to Wausau Truck Center d/b/a Peterbuilt Wisconsin-Wausau, dropped Volvo marketing efforts, stopped buying Volvo trucks for its inventory, and marketed Peterbuilt trucks to past Volvo customers.

In October 2001, the owner of WTC advised Volvo that WTC intended to sell its Volvo franchise and requested Volvo's assistance with the sale. Volvo did not assist with a possible sale, but negotiated with WTC about purchasing the franchise. The parties were not able to reach agreement on the value of the Volvo inventory and the franchise's good will.

By the end of 2002, WTC decided not to sell the Volvo franchise and began again to market Volvo trucks actively.

On May 20, 2003, Volvo sent WTC a notice of breach of its dealer agreement for 11 reasons. Volvo contends WTC's attempts to "cure" the alleged violations of its franchise agreement were insufficient and came too late under terms of the agreement. On Jan. 30, 2004, Volvo served notice of termination of the dealer agreement.

WTC filed an administrative complaint seeking to stop the termination. An administrative law judge (ALJ) and the Division of Hearings and Appeals (DHA) found that WTC had committed a material breach of the dealer agreement by implementing its plan to eliminate its Volvo dealership and failing to use its best efforts to promote and sell Volvo trucks and parts. However, the ALJ and the DHA found that there was no "just provocation," which is required to justify a dealership termination, because WTC had cured any material breaches within a reasonable time after being notified of the breach.

Volvo asked the Marathon County Circuit Court to review, contending that DHA had used the wrong definition of cure. However, the circuit court and Court of Appeals upheld the administrative law judge's decision.

The Court of Appeals noted that contrary to Volvo's arguments, whether a party has cured its breach is a question of fact, not of law, and that there was no basis to overturn DHA's factual findings.

In asking the Supreme Court to review the case, Volvo argues the term “cure” in Wis. Stat. § 218.0116 (1) (i) has never been defined by DHA or any court prior to this case. As a result, it contends that manufacturers and dealers are without guidance as to what a dealer must do to cure a breach and whether a manufacturer is entitled to terminate a motor vehicle dealership agreement.